

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

UTILITY BLOCK COMPANY, INC.

and

Case No. 28-CA-60750

**LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL UNION NO. 16**

David Garza, Esq., Counsel for the General Counsel.

John Hollis, Esq., John Hollis P.A., Counsel for the Charging Party.

William Cooksey, Esq. and *Frank Dickson, Jr. Esq.*, Dubois, Cooksey & Bischoff, P.A., Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me in Albuquerque, New Mexico on November 29, 2011.¹ The Complaint herein, which issued on August 31, and was based on an unfair labor practice charge and an amended charge that were filed on June 30 and August 23 by Laborers' International Union of North America, Local Union No. 16, herein called the Union, alleges that Utility Block Company, Inc., herein called the Respondent, in about late March, interrogated its employees about the Union sympathies of other employees, created the impression among its employees that their Union activities were under surveillance by the Respondent, undermined the Union by encouraging employees to engage in efforts to decertify the Union, and solicited and instructed employees on what actions they needed to take in order to decertify the Union, in violation of Section 8(a)(1) of the Act. The Complaint further alleges that the Union has been the collective bargaining representative for certain of the Respondent's employees since at least 1976, and the most recent contract between the parties was effective for the period of October 17, 2008 through March 31, 2011, and the Respondent admits this allegation. Finally, the Complaint alleges that the Union, by letter dated June 9, 2011, requested that the Respondent bargain collectively with it for a successor agreement, but that the Respondent has failed to respond to the letter and has failed and refused to bargain with the Union as the bargaining representative of the unit employees, in violation of Section 8(a)(1)(5) of the Act.

I. Jurisdiction

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2011.

III. The Facts

A. Negotiations

5 The principal individuals involved herein were Kevin Burfiend, Respondent's operations manager, C. Wesley Warner, Respondent's plant manager who, along with Burfiend, participates in Union negotiations every three years, and Jesus Flores, an employee of Respondent for about five years and a member of the bargaining unit. The evidence establishes that the parties have had a cordial collective bargaining relationship for about forty year². The
10 last contract was effective for the period October 17, 2008 to March 31, 2011. Article 26 of the Agreement states:

15 This Agreement shall become effective on the 1st day of April, 2008 and shall continue in force and effect until midnight, March 31st, 2011 and shall be automatically renewed from year to year unless terminated or changed pursuant to the following conditions: unless either party serves notice in writing upon the other hereto of intent to terminate this Agreement. Such notice shall be given no less than sixty (60) days nor more than ninety (90) days prior to midnight, March 31st, 2011...

20 By letter dated January 19, Eddie Archuleta, business manager and secretary of the Union, wrote to the Respondent:

25 Under Article XXVII [sic]- Term of Agreement of the current collective bargaining agreement, please be advised of our desire to reopen the agreement for negotiating wages, fringe benefits, holidays and language.

 Please contact this office at the above address within 15 days of receipt of this letter so that we may schedule a meeting date and time.

30 If you have any questions regarding this matter please contact this office at the above address or telephone number.

Burfiend testified that this letter was "consistent with past practice" in that neither party "terminated" the prior agreements in order to negotiate a successor agreement.

35 Burfiend further testified that on the day he received the letter, within a week or two of the date thereon, he called the Union to schedule bargaining for a new agreement. Burfiend, Warner and Archuleta testified about the negotiations. There were two negotiating sessions between the parties; however, the testimony differs as to the precise dates of these
40 negotiations, although this difference does not affect the ultimate decision herein. Burfiend initially testified that the first meeting took place in mid-February, but it "could have been mid-March." By letter dated March 8, Burfiend wrote to Archuleta acknowledging the Union's request to change the terms of the prior agreement and stated: "We believe it to be productive to schedule a follow-up date to our meeting held in early February, 2011 regarding changes to the
45 Collective Bargaining Agreement." By letter dated March 23, Archuleta wrote to the Respondent "...to clarify the agreement made regarding the deduction of working dues..." for Union members employed by the Respondent; dues would be deducted at a rate of three percent of

50 ² There was uncontradicted testimony, as well as exhibits, establishing that in 2011 the Respondent, upon request of the Union, allowed the Union to hold Union meetings at its facility, after working hours.

employees' wages. Burfiend testified that the second bargaining session took place on April 13; at this meeting the parties were able to reach agreement on most of the discussed items, and were very close to a complete agreement. He testified that one subject that was left open was holiday pay. The Union said that they would contact the Department of Labor to see if the proposed change was legal. He testified, "There were just a few odds and ends. For the most part, it had all been agreed upon." On May 27, Burfiend wrote to Archuleta:

The purpose of this letter is to acknowledge receipt of the proposed form of Collective Bargaining Agreement which contains several changes to the previous contract, some of which we discussed and some which were not discussed. We are in the process of reviewing the changes and will get back to you shortly on Utility Block's position regarding these changes.

We are also in receipt of a copy of the enclosed letter, apparently originated in late April, wherein thirteen of the fifteen employee members of the Collective Bargaining Unit have indicated their desire to terminate their membership in your Union. Utility Block has always believed that a good relationship exists with your Union and the employees. However, in light of having received this letter, we are unsure as to how to proceed.

We would, therefore, appreciate hearing from the Union regarding its position concerning this letter.

The Union never responded directly to this letter. However, Archuleta wrote to the Respondent, by letter dated June 9:

I am writing to notify Utility Block Company, Inc. that Laborers #16 would like to proceed with negotiations of the current collective bargaining agreement. We have not had any type of communications regarding negotiations since our last meeting of March 31, 2011, you informed Local #16 that your legal department would be looking at the changes to the agreement under Article #5 Management Rights. At this time Laborers Local Union #16 respectfully request that you provide a response to Utility Block's position regarding these negotiations within 10 (ten) working days. Laborers Local Union #16 would like Utility Block's cooperation in this endeavor so that negotiations can be finalized.

The Respondent did not respond to this letter and there have been no further bargaining sessions between the parties. Counsel for the General Counsel asked Burfiend:

Q Is it Utility Block's position that since it received the employee signature list, the union does not represent a majority of employees in the unit?

A That's what the list indicates to us. Yes.

In answer to a question from counsel for the Charging Party about the Respondent's decision not to negotiate further with the Union, he testified:

I believe it was whenever charges were pressed against us... We were in hopes that the Union could take care of the employees, get all that taken care of. We could proceed with the contract, get it signed, and go on our way as we have for 40 years...

So until we had received that we were being brought up on charges, we were more than willing to continue. Just today, if we could sign a contract and the employees are happy

being in the union, we could sign the contract today and it's done.

Burfiend testified that the contract is "in final or close to final draft" and lacks the Respondent's signature:

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Q And with regard to whether the employer is going to sign it, you attested that the employer is not going to, as long as this employee list remains unresolved. Is that correct?

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A That is correct.

Q And that it's your position that in reliance on that list, that the Union does not represent those employees as a result of this list. Is that correct?

15

A That is correct.

Q And that is preventing you from executing that contract, the new contract.

20

A That is correct.

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Warner testified that in addition to overseeing production and ordering supplies, he accompanies Burfiend in negotiations with the Union every three years. Linda Smith, Respondent's controller, attended the second meeting with Warner and Burfiend. He testified that he believes that the two negotiating sessions were February 4 and April 13. At the first meeting, "...we came up with some changes that we wanted, and they said that they'd check into it, and we concluded the meeting," which took about forty five minutes. He testified further that at the conclusion of the second meeting on April 13: "As far as I was concerned, the contract was a done deal and just needed to be signed." The two changes they had discussed were holiday pay and the probationary period, and, "They didn't think there was any problem with that, and they'd get back with Kevin with a contract." However, the contract was never signed. Smith testified that she was present at the April 13 bargaining session, which lasted between an hour and an hour and a half. Three subjects were discussed at this meeting: Archuleta said that he was going to discuss the change in the probationary period from thirty days to ninety days with the Department of Labor to be certain that it was legal, and that he would get back to the Respondent about that. In addition, they discussed the three percent dues change as well as holiday pay. She was asked by counsel for the Respondent:

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Q Was there any discussions, if you recall, regarding finalization of the contract?

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A Yes. They said they would look it over, get back with us on the Labor Board decisions [actually, the Department of Labor], and then they would contact us and have it signed and move on.

45

Archuleta testified that the two bargaining sessions with the Respondent were on March 9 and March 31. He testified that at the second session, the parties were able to reach agreement on most of the items discussed, but were not able to reach agreement on all the items. He directed Union President Louis Moya to contact the Respondent "to try and proceed with the negotiations," but either the Respondent or the Union was unavailable: "So that's where it stopped." At the time he received Burfiend's May 27 letter, he had not been aware of this petition.

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The Union never received a response, in writing or oral, to his June 9 letter and he has

had no contact with the Respondent since writing the letter. As to the current status of bargaining, he testified:

5 As far as I know, we still have a contract that we're working on...dues are still being taken out of the members. We still provide training to Utility Block, and they continue to pay dues to the training fund.

10 On cross examination, Archuleta testified that the Union sent the Respondent a proposed contract in late April (referred to in Burfiend's letter to Archuleta dated May 27), which contained proposals that were discussed in both negotiating sessions³. He never responded to the second paragraph of Burfiend's May 27 letter to him.

B. The Employees' Petition

15 Burfiend testified that at about the end of March Warner came to his office and told him that Flores approached him and told him that he had spoken to the employees at the facility and they wanted to get out of the Union. Burfiend told Warner to bring Flores to his office, which he did. Burfiend told Flores that, as his employer, he had an obligation to the employees, and if the employees were unhappy with the Union, they should put their feelings in writing and bring it to him. As to why he told Flores that he should bring him something in writing, he testified:

25 I wanted to make sure that the employees were happy with the Union, and hopefully he was going to bring me a letter with maybe three or four signatures on it...So, I just needed to know that the majority of the employees were still fine with the Union.

30 On April 4 Warner came to his office (Burfiend could not recall whether Flores was with him) and handed him a document entitled: "The undersigned employees of Utility Block Company, Inc. wish to terminate their membership with Laborers International Union of North America effective immediately discontinuing membership dues and/or any other membership obligations." The petition was signed by thirteen of the fifteen unit employees, all of which were dated April 4.

35 Warner testified that Flores approached him in about late March or early April and said that he was tired of the Union and so were some other employees. Warner told Burfiend of this conversation, and Burfiend told him to bring Flores to his office, which he did. On about April 4, Flores approached him and handed him the petition without the signatures and he asked if he could ask the employees to sign it, and Warner said that he could get it signed at break, lunch or anytime, "As long as it doesn't interrupt production." On the following day, Flores handed Warner the petition with the signatures and Warner and Flores went to Burfiend's office. He handed it to Burfiend and he and Flores left, without saying anything. A few weeks later, Burfiend asked Warner if Flores had given the Union a copy of the petition. Flores went to the production floor and asked Flores if he had given the Union a copy of the petition, and Flores said that he brought a copy to the Union the day after they gave it to Burfiend. Smith testified that in about May or June, counsel for the Respondent asked her to verify the employee names and signatures and on the petition. She determined that they were all current employees and their signatures matched.

50 ³ A difficulty I had with his testimony is that he apparently had the dates of the negotiating sessions confused. I find, based upon the testimony of Burfiend, Warner and Smith that the sessions were held in early February and April 13.

Flores testified that he heard rumors that the employees didn't want to be in the Union, and "...every time when I walked through the break room, I hear that nobody wanted to be in the Union anymore." He spoke to his wife, who prepared a paper for him to have the employees sign, and he asked Warner if he could take the list around to the employees to have it signed.

Warner asked what list he was talking about and Flores said that it was the employees who didn't want the Union, and Warner said that he could, but to do it on his lunchtime. Warner also told him that he was a "company guy," He then went to speak to Burfiend and told him, "I don't want to put anyone in trouble. This is mine, and I want to do it myself. And I just do it, and I walked to everybody and made everybody sign this paper." He testified that Burfiend did not tell him to have the employees' feelings about the Union put in writing and bring it to him. He spoke to employees on the plant floor and in the break room. For the employees who could not read English, he translated into Spanish the words on the petition. He did not make any threats or promises to the employees when he asked them to sign: "They already agree they don't want to be in the Union." Nobody at the Respondent helped him prepare the petition; his wife prepared it on her own.

IV. Analysis

Initially, I can see no reason to discredit any of the witnesses herein. Burfiend, who was questioned by Counsel for the General Counsel pursuant to 611(c), readily admitted to the facts without the evasiveness that often results when representatives of Respondents are questioned under 611(c). Warner and Smith also appeared to be testifying in an honest and credible manner, and I credit their testimony, as well. While Archuleta had some difficulty with the dates of the negotiating sessions, and Flores had some language difficulty, they also appeared to be attempting to testify in an honest and truthful manner.

Prior to an analysis of the substantive allegations herein, is necessary to discuss the Respondent's defense that the Union did not properly terminate the prior collective bargaining agreement, resulting in its renewal for another year beginning April 1, 2011. I find no merit in that argument. Burfiend testified that Archuleta's January 19 letter was consistent with the parties' past practice and that, in the past, neither party "terminated" the prior agreements in order to negotiate a successor agreement. In addition, although Archuleta's letter does not use the word "terminate," his letter said that the Union wanted to "reopen" the contract and negotiate a new agreement, and the parties commenced negotiations based upon this letter. I therefore find that Archuleta's letter was sufficient notice to the Respondent that the Union wished to terminate the existing agreement, and therefore the agreement did not renew for an additional year as argued by the Respondent.

The Complaint initially alleges that the Respondent, by Burfiend, violated Section 8(a)(1) of the Act by:

(a) Interrogating its employees about the Union sympathies of other employees;

(b) Creating the impression among its employees that their Union activities were under surveillance by the Respondent;

(c) Undermining the Union by encouraging employees to engage in efforts to decertify the Union; and

(d) Solicited and instructed employees regarding what actions they needed to take to decertify the Union.

Counsel for the General Counsel, in his brief, argues that the Respondent, by Burfiend, interrogated its employees about their Union sentiments and created the impression among its employees that their Union activities were under surveillance by the Respondent in violation of Section 8(a)(1) of the Act. As regards the interrogation allegation, he alleges: “Burfiend’s statements to Flores in late March 2011 that he was aware of his Union sentiment and the sentiment of other employees constitutes unlawful interrogation. The statements were made in such a way as to coax a response or reply from Flores so Respondent could get more information on employee sentiment that Respondent would not be able to lawfully ask directly.” As regards the creation of surveillance allegation, Counsel for the General Counsel states that in the same conversation with Flores, Respondent, by Burfiend, created “the impression with an employee that his Union activity and sentiments were known and being monitored by the highest-ranking management representative at Respondent’s facility.” I disagree. The undisputed evidence establishes that it was Flores who approached Warner and said that he and the other employees were tired of the Union and wanted to know how to “get out of the Union.” Warner told Burfiend of this conversation, and Burfiend told him to bring Flores to his office, which he did. Burfiend told Flores that if the employees were unhappy with the Union, “they should put their feelings in writing and bring it to him,” and Warner permitted Flores to approach other employees with the petition during breaks, lunch or anytime as long as it didn’t interrupt production. While, in hindsight, Burfiend should have told Flores to call the Board to learn what to do, and Warner should have placed more restrictions on Flores in collecting signatures on the petition, their actions did not constitute unlawful interrogation or the creation of the impression of surveillance, and I find that their actions did not violate Section 8(a)(1) as alleged in Paragraph 5(a)(1) and (2) of the Complaint.

The ultimate issues herein is whether Burfiend and Warner’s actions tainted the petition, and whether the Respondent, by failing to respond to the Union’s June 9 request to continue and complete the bargaining for a new contract, violated Section 8(a)(5) of the Act. The analysis herein begins with *Levitz Furniture Company of the Pacific*, 333 NLRB 717 (2001), which decided that “an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees.” Citing *Levitz*, the Board in *Wurtland Nursing & Rehabilitation Center*, 351 NLRB 817 (2007), stated: “Thus, in order to rebut the continuing presumption of majority status, the employer bears the burden of showing, through objective evidence, an actual loss of the union’s majority status at the time of the withdrawal of recognition.” In the same manner, the Board, in *HQM of Bayside, LLC*, 348 NLRB 758, 759 (2006), stated: “The Union does not have to demonstrate conclusively to the employer prior to withdrawal of recognition that it still has majority status. Rather, it is the employer’s burden to show an actual loss of the union’s majority support at the time of the withdrawal of recognition.” However, even if the Union had lost majority support of the unit employees, it is necessary to determine whether that loss of support was “tainted” by the employer’s unfair labor practices or whether the employer improperly aided the anti-Union effort. In *SFO Good-Nite Inn, LLC*, 357 NLRB No. 16 (2011), the Board adopted the test of *Hearst Corp.*, 281 NLRB 764 (1986), stating that it applies:

when an employer has engaged in unfair labor practices directly related to an employee decertification effort, such as “actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing or filing of an employee petition seeking to decertify the bargaining representative.” In those situations, the employer’s unfair labor practices are not merely coincident with the decertification effort; rather they directly instigate or propel it. The Board therefore presumes that the employer’s unlawful meddling tainted any resulting expression of employee disaffection, without specific proof of causation, and precludes the employer from relying on that expressed disaffection to overcome the union’s continuing presumption of majority support...*Hearst* thus creates a conclusive

presumption that an employer's commission of unfair labor practices assisting, supporting, encouraging, or otherwise directly advancing an employee decertification effort taints a resulting petition.

5 The Board also cited *Auciello Iron Works v. NLRB*, 517 U.S. 781, 790 (1986), where the Court stated that it is particularly appropriate to give “a short leash to the employer as vindicator of its employees’ organizational freedom...the Board is accordingly entitled to suspicion when faced with an employer’s benevolence as its workers’ champion against their certified union, which is subject to a decertification petition from the workers if they want to file one.”

10 As there were no other independent unfair labor practices committed by the Respondent, the initial issue is whether the petition was tainted by Burfiend’s telling Flores that if the employees were unhappy with the Union, “they should put their feelings in writing and bring it to him,” and Warner permitting Flores to approach other employees with the petition
15 during breaks, lunch or anytime as long as it didn’t interrupt production. The most often stated rule in this area is that an employer may not “exceed the permissible bounds of providing ministerial or passive aid in withdrawing from union membership.” *Chelsea Homes*, 298 NLRB 813, 834 (1990). In *Times-Herald, Inc.*, 253 NLRB 524 (1980), the Board similarly stated: “Indeed, the test is whether the Respondent’s conduct constitutes more than ministerial aid.”
20 *Corrections Corporation of America*, 347 NLRB 632, 633 (2006), stated: “It is not determinative that an employer does not expressly advise employees to get rid of the union. Indeed, such direct appeals are not essential to establish that an employer solicited decertification.” [citations omitted] In *Lee Lumber and Building Material Corp.*, 306 NLRB 408, 409 (1992), the Board stated: “It is clear that, under Section 8(c), an employer may lawfully furnish accurate
25 information, especially in response to employees’ questions, if it does so without making threats or promises of benefits.” In two situations where the Board found that the employers’ actions did not “cross the line,” the Board in *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985), found that the employer did not provide more than ministerial aid to its employees in support of a decertification petition although its attorney provided an employee with assistance in the
30 wording of the petition, as well as certain information (unit description, the names of the employer’s officials and the number of employee signatures that would be needed), and in *Ernst Home Centers.*, 308 NLRB 848 (1992), the Board also found that the employer did not provide more than ministerial aid when in response to an employee’s request for some “verbiage” for the petition, the employer provided the decertification language to the employee. Finally, in *Wire
35 Products Manufacturing Corporation*, 326 NLRB 625, 626 (1998), the Board found that the employer violated Section 8(a)(1) and (5) of the Act by sending a letter to the employees disparaging the union, and then by withdrawing recognition, alleging that the union had lost its majority support. However, in that decision, the Board also stated: “Thus, this is not a case in which an employer merely set forth objective information detailing the manner in which
40 employees can decertify the union in response to employee questions.” On the basis of these cases, I find that the Respondent did not cross the line established therein by the Board. Burfiend furnished Flores with accurate information in response to his inquiry, and he and Warner did less than the employers in *Eastern States* and *Ernst, supra*. I therefore find that the Respondent did not violate Section 8(a)(1) of the Act as alleged in Paragraph 5(c) and (d) of the
45 Complaint.

The final issue in determining whether Respondent’s refusal to continue negotiations with the Union was unlawful depends upon whether it was justified in basing its refusal upon Flores’ petition. I find that it was not. The petition, signed by a majority of the employees, states
50 that the employees “...wish to terminate their membership with [the Union] effective immediately discontinuing membership dues and/or any other membership obligations.” The infirmity of this petition is that the employees signing this petition affirmed that they wished to *terminate their*

Union membership. Under clear Board law, that is different from expressing a desire to terminate the Union's *representation* rights. Terminating their membership means that they wish to pay no, or limited, dues to the Union, while the Union continues to represent them in dealings with their employer. Terminating the Union's representation rights means what it says: that the Union no longer represents the employees in dealings with their employer. As the petition states the former, it is not a valid basis for withdrawing recognition or of refusing to bargain with the Union. *Trans-Lux Midwest Corporation*, 335 NLRB 230, 232 (2001); *Crete Cold Storage, LLC*, 354 NLRB No. 114 (2009). Therefore, by failing and refusing to respond to the Union's June 9 letter, and by refusing to continue negotiating with the Union, based upon the petition, the Respondent violated Section 8(a)(1)(5) of the Act.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1)(5) of the Act by failing and refusing to bargain with the Union after receiving the Union's June 9, 2011 letter requesting bargaining.

4. The Respondent did not also violate the Act as further alleged in the Complaint.

The Remedy

Having found that the Respondent unlawfully refused to respond to the Union's June 9 letter requesting bargaining, and refused to bargain with the Union for a contract to replace the agreement that expired on March 31, I recommend that it be ordered to bargain with the Union and if an agreement is reached to put that agreement in writing. I also recommend that the Respondent be ordered to post a notice informing its employees that it will bargain in good faith with the Union, their bargaining representative.

Upon the forgoing findings of fact, conclusions of law and on the entire record, I hereby issue the following recommended⁴

ORDER

The Respondent, Utility Block Company, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union, the collective bargaining representative of certain of its employees.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights as guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Bargain with the Union as requested by the Union's June 9, 2011 letter and, if an agreement is reached between the parties, embody that agreement in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Albuquerque, New Mexico, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 9, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., January 25, 2012.

Joel P. Biblowitz
Administrative Law Judge

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain with Laborers' International Union of North America, Local Union No. 16 ("the Union"), the collective bargaining representative of certain of our employees.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce you in the exercise of your rights guaranteed you by Section 7 of the Act.

WE WILL bargain with the Union concerning the terms and conditions of employment of our employees and, if an agreement is reached, we will embody that agreement into a signed collective bargaining agreement with the Union.

UTILITY BLOCK COMPANY, INC.

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800

Phoenix, Arizona 85004-3099

Hours: 8:15 a.m. to 4:45 p.m.

602-640-2160.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.